

REMARKS

This responds to the Office Action mailed on February 25, 2008.

No claims are amended, no claims are canceled, and no claims are added; as a result, claims 1-25 stand pending in this application.

Examiner Interview Summary

Applicants would like to thank Examiner Hani M. Kazimi for the courtesy of a phone interview on April 9, 2008 between the Examiner and Applicants' representative Ali Miresghhi. During the interview, the claims and the cited references were discussed. The Examiner would consider Applicants' arguments once filed in a formal response.

§103 Rejection of the Claims

Claims 1-3, 8-10 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf (U.S. 5,794,221) in view of eBay ("The Official eBay Guide to Buying, Selling, and Collecting Just About Anything").

For the reasons set forth below, Applicants respectfully submit that the identified claims are non-obvious over Egendorf, in view of eBay and are therefore allowable. Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.¹

Claim 1 recites, in pertinent parts:

determining that the first participant is qualified to accept the at least one of the plurality of payment instruments, the determination being based on a risk management operation;

determining a risk level of an online payment transaction between the first participant and the second participant using at least feedback information . . .

(Emphasis added throughout)

¹ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)

The Office Action, at page 3, concedes that Egendorf fails to teach these limitations. However, the Office Action alleges that the limitations are disclosed by eBay at pages 108-109. Applicants respectfully disagree with the allegation and submit that the cited passages from eBay do not disclose these limitations. EBay is merely a guide to buying, selling, and collecting items and “shows how to buy smart, be a savvy seller, learn from the experts, and find the great stuff”² Specifically, at pages 108-109, eBay describes “establishing payment methods and terms” by describing various instruments such as personal checks, money orders, credits cards, and escrow. For example, under subtitle “[c]redit card,” eBay states “Credit cards make it convenient for buyers and expedite payment and shipping. If you become a serious seller, you should consider accepting credit cards.” Nonetheless, eBay does not *determine that the first participant is qualified to accept the at least one of the plurality of payment instruments, based on a risk management operation* as required by claim 1. In fact, eBay is a guide book and naturally is not expected to perform any operation, such as a *risk management operation*, which is performed, for example, by the “risk management system” in the current application (see, for example, page 25, lines 5-9). As such, eBay fails to disclose the limitation of “*determining that the first participant is qualified to accept the at least one of the plurality of payment instruments, the determination being based on a risk management operation*,” as recited in claim 1.

The Office Action, when discussing the claim 1 limitation of “*determining a risk level of an online payment transaction . . .*,” relies on eBay at pages 31-35. Applicants respectfully submit that cited pages from eBay do not teach or suggest the claimed “determining a risk level,” much less the claimed “risk level to determine whether the second participant is qualified to use a payment instrument.”

In contrast, *eBay* at pages 31-35 describes a mechanism for sharing a user’s feedback with other users. According to *eBay*, users share feedback to allow “buyers and sellers to establish a track record in the community that can be viewed by potential buyers and sellers.”³ Accordingly, at least for the reasons set forth above, Egendorf and *eBay*, individually or in the combination, do not teach or suggest each and every element of claim 1. Therefore, Applicant respectfully submits that there are substantial differences between what is claimed and what the

² eBay, Back Cover

³ *eBay* at page 31

Office Action contends to be shown in Egendorf and *eBay*, whether they are considered separately or in combination. Because the cited documents do not show all of the elements of the claimed subject matter of the amended claim 1, those differences are significant and non-obvious to a person of ordinary skill in the art at the time the application was filed. Thus, claim 1 and its dependent claims 2-3, 8-10, and 12 are not rendered obvious by the combination and are allowable. Reconsideration and allowance is respectfully requested.

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Gifford (U.S. 6,049,785).

Claims 5-6 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Watson (U.S. 5,978,780).

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Egendorf in view of *eBay* and further in view of Tessler (“*eBay’s Deal with Wells Fargo Allows Seller to Accept Credit*”).

Each of claims 4, 5-7, and 11 depend, directly or indirectly, on claim 1. As noted above, the combination of Egendorf and *eBay* does not teach or suggest each and every element of claim 1. For the combination of Egendorf, *eBay*, and Gifford, Watson or Tessler to teach or suggest each and every element of claims 4, 5-7, and 11, Gifford, Watson or Tessler must teach what the combination of Egendorf and *eBay* are lacking. The Office Action does not point to and the Applicants could not find a passage in Gifford, Watson or Tessler that teaches or suggests the limitations of “*determining that the first participant is qualified to accept the at least one of the plurality of payment instruments, the determination being based on a risk management operation*” and “*determining a risk level of . . . the risk level to determine whether the second participant is qualified to use a payment instrument selected by the second participant from the at least one payment instrument acceptable to the first participant,*” as recited in claim 1. As such, Applicants respectfully submit that the combination of Egendorf, *eBay*, and Gifford, Watson, or Tessler does not teach or suggest each and every element of claim 1 and its dependent claims 4, 5-7, or 11. Accordingly, claims 4, 5-7 and 11 are allowable.

Claims 13-24 were rejected as being the system form of Claims 1-12.

Claim 25 was rejected as being a machine readable medium comprising the steps recited in method claim 1.

Similar arguments as presented with respect to claim 1 are also applicable to a consideration of claims 13 and 25. Applicants respectfully submit that, for at least the reasons articulated above, the combination of Egendorf and *eBay* does not teach or suggest each and every element of claims 13 and 25. Thus, claims 13 and 25 and the dependent claims 14-24 are allowable.

Reconsideration and withdrawal of the claim rejections under 35 U.S.C. § 103(a) are respectfully requested.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at 408-278-4053 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date May 08, 2008

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CERTIFICATE UNDER 37 CFR § 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 8 day of May 2008.

CHRIS BARTU
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[Signature]
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